IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 925 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M/S. J.V.BAHARUNI

Versus

THE STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 925 of 2004

MR MRUGEN K PUROHIT for Petitioner No. 1-2

MR AY KOGJE, APP for Respondent No. 1

DS AFF.NOT FILED (N) for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 20/09/2004

ORAL JUDGEMENT

1. Heard ld. counsel appearing for the parties. Considering the submissions made before this Court, the

Court is inclined to issue Rule. Hence, Rule. Ld. APP Mr. AY Kogje appears and waives service of Rule for respondent No.1 State and ld. counsel Mr. MR Bhatt appears and waives service of Rule for respondent No.2. On consent, Rule is fixed forthwith.

2. It is submitted by ld. counsel Mr. Purohit for the petitioners that right to cross-examine the witnesses examined during the course of trial, requires to be reopened otherwise serious prejudice is likely to be caused to the present petitioners and the petitioners are ready to pay any amount towards costs that may be determined by the trial Court. This Court can even direct the present petitioners to deposit some lumpsum amount before the trial Court and the petitioners are also ready to see that advocate appearing on behalf of the petitioners before the trial Court co-operates in expeditious conduction of the case. However, Mr. Purohit has clarified that ld. counsel appearing for the petitioners -accused in the trial Court is bed-ridden and it may take at least 20 to 25 days for full recovery. If the petitioners or their advocate find that it will not be possible for the advocate to defend the present petitioners in trial and proceeding with the matter even after 20 days, then the petitioners shall see that some other Advocate appears and start cross-examination of the witnesses examined and other witnesses if examined by the prosecution.

3. In view of above submissions, ld. counsel Mr. MR Bhatt appearing for respondent No.2 submits that he is not pressing for reasoned order and states that appropriate directions, in view of above submissions made by the ld. counsel appearing for the petitioners as above, may be issued.

4. So, without entering into the merits of the matter and in view of the submissions made by the ld. counsel appearing for the parties, the following order is passed:-

5. The present petition is allowed. The impugned order dated 16.08.2004 passed by ld. JMFC, Veraval below application Exh.62 is hereby quashed and set aside. Right to cross-examine the witnesses examined by the prosecution is hereby re-opened. However, the petitioners shall see that the advocate defending them before the trial Court appears before the Trial Court after 20 days on the date that may be fixed by the trial Court for recording of evidence in the case of the present petitioners. The petitioners shall not seek any time/adjournment after 20 days. The petitioners shall deposit an amount of Rs.15,000/ (Rs. fifteen thousand only) before the trial Court within 7 days from today and

ld. trial Judge can award reasonable amount to the complainant as well as witnesses to meet with the expenses against the costs and to pay Bhaththhas etc. of the witnesses. The petitioners also shall file an undertaking to the effect that they shall co-operate with the hearing of the matter in examination of the witnesses who are called on behalf of the prosecution and shall co-operate with the expeditious conduction of the trial. If required, they shall make necessary arrangement of another advocate if advocate defending them is not in a position to appear in the Court. Of course, the ld. trial Judge shall see that the date of hearing is fixed after first 20 days from today. The petitioners shall see that Revision Application pending before the ld. Addl. Sessions Judge, Veraval against the order below application exh.62 is withdrawn. It will be obligatory on the part of the ld. JMFC to see that trial is proceeded within the stipulated period stipulated by the ld. Sessions Judge.

6. Rule is made absolute subject to the observations and directions as aforesaid. Direct Service is permitted.

[C.K. BUCH, J]

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